

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

In re)	
)	
VILLAGE OF ALORTON,)	Case No. 05-30055
)	Chapter 9
Debtor.)	

ILLINOIS DEPARTMENT OF)	
TRANSPORTATION,)	
)	
Plaintiff,)	
)	
vs.)	Adv. No. _____
)	
VILLAGE OF ALORTON,)	
)	
Defendant.)	

COMPLAINT FOR NONDISCHARGEABILITY

Plaintiff ILLINOIS DEPARTMENT OF TRANSPORTATION, seeking a declaratory judgment and other relief against the Defendant, VILLAGE OF ALORTON, alleges:

1. Plaintiff ILLINOIS DEPARTMENT OF TRANSPORTATION, hereinafter IDOT, is a code department of the State of Illinois, organized and existing under 20 ILCS 5/5-15.
2. Defendant VILLAGE OF ALORTON, hereinafter ALORTON, is an Illinois municipal corporation, organized and existing under 65 ILCS 5/1-1-1 *et seq.*
3. ALORTON has scheduled IDOT as an unsecured non-priority creditor on its

Amended Schedule F.

4. ALORTON has classified such debt to IDOT as a Class 1 claim and proposed to pay 10% of Class 1 claims over six (6) years with 4% annual interest, in quarterly payments.
5. Such debt to IDOT is based on Illinois motor fuel tax, hereinafter MFT, amounting to \$66,305.36, used by ALORTON, prior to the filing of its Chapter 9 petition, for purposes not authorized by 605 ILCS 5/7-202 *et seq.* or other state law.
6. Under 605 ILCS 5/7-203.1, IDOT is empowered to determine that municipalities propose to use or have used periodic allocations of MFT in ways authorized by state law, found at 605 ILCS 5/7-202 *et seq.* and elsewhere, and to not approve expenditures that are not so authorized.
7. ALORTON has attempted to defeat or sidestep the authorized uses of MFT, by failing to file requests, or to seek approval of requests for use of MFT allocations, so that it used periodic allocations of MFT under false pretenses.
8. ALORTON has become and will become entitled to additional periodic allocations of MFT.
9. IDOT is entitled to utilize the common law doctrine of recoupment to recover such unauthorized expenditures from ALORTON'S additional periodic allocations of MFT.

WHEREFORE, Plaintiff ILLINOIS DEPARTMENT OF TRANSPORTATION asks this court **to find** that unauthorized uses of MFT by the VILLAGE OF ALORTON are exceptions to discharge under 11 USC 523(a)(2)(A) and additionally, that the Plaintiff is entitled to utilize the common law remedy of recoupment to recover such unauthorized

expenditures, and **to enter judgment** on such finding, in favor of Plaintiff and against Defendant VILLAGE OF ALORTON.

ILLINOIS DEPARTMENT OF
TRANSPORTATION,

Plaintiff,

By /s/ *Val C. Simhauser*

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